

the need to license effective PCS systems is even more significant. Application mills can substantially hinder that process.

Application mills are enterprises, which for a fee, will submit an application to the FCC. The mills use efficient processing to file dozens or even hundreds of applications far more quickly than companies that have a true interest in obtaining a license from the FCC. Application mills have created problems in the development of cellular telephone service and wireless cable.²⁴ The Office of Advocacy fully expects that application mills will be unable to resist the extremely lucrative temptations of PCS.²⁵ Therefore, the Office of

²⁴ The Office of Advocacy discounts any argument that application mills assist small businesses in entering a new and technically complex field. As the Office of Advocacy has pointed out in another proceeding, In the Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Service, CC Docket No. 92-115, Comments of the Chief Counsel for Advocacy at 9-10, the primary purpose of the application mills is to extract cash settlements by reselling the license to a company that has the capacity and desire to utilize the license.

Small businesses often are affected disproportionately because they do not have the resources to make the type of cash settlement demanded by an application mill lottery winner. This will deter small telecommunication firms from fully participating in this new field in contravention of stated FCC goals.

²⁵ The Office of Advocacy can already envision television and newspaper advertisements requesting unsuspecting consumers to get involved in the lottery for PCS. The advertisements will promote the ground floor opportunity associated with establishing new telephone companies and that the government is giving away this chance to be the next Alexander Graham Bell. Such enticements will do wonders to the bank accounts of application mills but do little to foster the establishment of an integrated, seamless wireless communications network.

Advocacy recommends that the Commission take strong action against the potential abuses that application mills may create in the licensing of PCS.

The Office of Advocacy supports the second option. While this may be initially somewhat more expensive for small business, the long-term benefits will outweigh any short-term costs. The second option will reduce the number of potential entrants in the lottery, lessen the impact of application mills, and provide a better chance for those businesses truly interested in developing PCS to win a license.

To further enhance protections against application mill abuses, the Commission must prohibit the resale of licenses or other changes in license ownership for a set period of time. This will deter mills because their applicants will have little or no hope of a relatively quick payoff if they win a lottery.²⁶ The Commission must grant exemptions to this prohibition but only on the showing of appropriate business necessity, such as a company leaving the PCS business or seeking additional capital.

²⁶ These protections could be reinforced by requiring that licensees commence construction of their systems within a specified period of time. If they do not, then the licensees would lose the authorization. The FCC should allow licensees to apply for extensions of the date of construction commencement about these extensions must be given only for provable business difficulties, such as inclement weather, disasters, sudden loss of financing, etc.

With these protections, the Office of Advocacy believes that the Commission will be able to ensure deployment of PCS with all deliberate speed. Moreover, these protections will help ensure that small business have a fair opportunity to participate in the embryonic stages of a new telecommunications revolution.

VI. *Regulatory Status*

The Act provides for two types of carriage, private and common. Longstanding controversies over the extent of each type of service forced Congress to clearly demarcate the line between private and common carriage. In the 1982 amendments to the Act, Congress denoted a private carrier as one which uses a multiply licensed or shared mobile radio dispatch system. 47 U.S.C. § 332(c)(1). Such systems, except in certain circumstances, cannot interconnect with the public switched network provided by interexchange and local exchange carriers. *Id.* To the extent that they are permitted to interconnect, they may not resell such interconnections for a profit. NPRM at ¶ 95. Furthermore, private carriers are exempt from state and local rate regulation. All other types of carriers are common and subject to, *inter alia*, Commission rate regulation.

Due to the nature of the technology employed in PCS, it is not clear whether the service is private or common. It has attributes of both and the FCC requests comments on which

classification it should adopt. *Id.* at ¶¶ 94-97. The Commission also concludes that, irrespective of service classification, the FCC probably will not impose any type of rate regulation on PCS because no person will be required to take such service. *Id.* The Commission also tentatively decides that PCS must have the comparable interconnection to the public switched network available to any other customer of the LEC. *Id.* at ¶ 101.

The Office of Advocacy strongly supports efforts to replace rate regulation with control of prices through market competition. The proposals set forth in these comments are designed to imbue the PCS market with sufficient competition that consumers will never have to rely on the backstop of government regulation to obtain just, reasonable, and non-discriminatory prices.

The Office of Advocacy also endorses the FCC's proposal to permit interconnection comparable to that received by other customers of the public switched network. Given the Office of Advocacy's support for smaller licensing areas, a viable PCS network will occur only if the Commission authorizes interconnection. Otherwise, the systems may be too small and inefficient except for the narrowest of commercial niches.

Finally, the Office of Advocacy believes that PCS should be classified as a common carrier. While initially the system will

be viewed as some optional service by the public, the ultimate aim of the Commission for PCS is a wireless network that can compete and ultimately integrate with the current wireline network for voice and data communications. Since that network is based on the principles of common carriage, the PCS network must adopt the same concept. As a common carrier, PCS firms will have few hurdles to jump to obtain interconnection. Moreover, they will be able to package in the least cost manner their service with interconnection at a substantial cost savings to users.²⁷ The ease of interconnection availability will provide an additional incentive to the growth of PCS that private carriage will not.

VII. *Conclusion*

A seamless, integrated wireless voice and data communications network holds much promise for the future. The Office of Advocacy, like the Commission, believes that small business will play an integral role in the evolution of this technology. Small businesses almost always fair best when given a competitive environment in which to operate. The

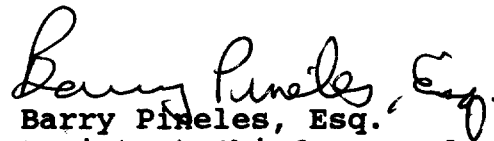
²⁷ The Office of Advocacy backs the FCC proposal to declare that all providers of PCS are non-dominant and not subject to rate regulation. However, our support for the conclusion rests on the award of at least five licenses per area. Any other limitation on the actual number of licensees will reduce competition and substantially abate our support for the non-dominance determination.

recommendations made in these comments are designed to ensure that as competitive a market as technologically possible develops for PCS.

Respectfully submitted,

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